

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION v. FAVISH ET AL.**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

No. 02–954. Argued December 3, 2003—Decided March 30, 2004

Skeptical about five Government investigations' conclusions that Vincent Foster, Jr., deputy counsel to President Clinton, committed suicide, respondent Favish filed a Freedom of Information Act (FOIA) request for, among other things, 10 death-scene photographs of Foster's body. The Office of Independent Counsel (OIC) refused the request, invoking FOIA Exemption 7(C), which excuses from disclosure "records or information compiled for law enforcement purposes" if their production "could reasonably be expected to constitute an unwarranted invasion of personal privacy," 5 U. S. C. §552(b)(7)(C). Favish sued to compel production. In upholding OIC's exemption claim, the District Court balanced the Foster family's privacy interest against any public interest in disclosure, holding that the former could be infringed by disclosure and that Favish had not shown how disclosure would advance his investigation, especially in light of the exhaustive investigation that had already occurred. The Ninth Circuit reversed, finding that Favish need not show knowledge of agency misfeasance to support his request, and remanded the case for the interests to be balanced consistent with its opinion. On remand, the District Court ordered the release of five of the photographs. The Ninth Circuit affirmed as to the release of four.

Held:

1. FOIA recognizes surviving family members' right to personal privacy with respect to their close relative's death-scene images. Favish's contention that Exemption 7(C)'s personal privacy right is confined to the right to control information about oneself is too narrow an interpretation of *Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U. S. 749, which held that the personal privacy

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concept must encompass an individual's control of information about himself, but had no occasion to consider whether those whose personal data are not in the requested materials also have a recognized privacy interest under the exemption. It did explain, however, that Exemption 7(C)'s concept of privacy is not a limited or cramped notion. The exemption is in marked contrast to Exemption 6, which requires withholding of personnel and medical files only if disclosure "would constitute a clearly unwarranted invasion of personal privacy." Exemption 7(C)'s comparative breadth—it does not include "clearly" and uses "could reasonably be expected to constitute" instead of "would constitute"—is no drafting accident, but is the result of specific amendments to an existing statute. Because law enforcement documents often have information about persons whose link to the official inquiry may be the result of mere happenstance, there is special reason to protect intimate personal data, to which the public does not have a general right of access in the ordinary course. The modifier "personal" before "privacy" does not bolster Favish's view that the family has no privacy interest in a decedent's pictures. Foster's relatives invoke that interest to secure their own refuge from a sensation-seeking culture for their own peace of mind and tranquility, not for the sake of Foster's reputation or some other interest personal to him. It is proper to conclude that Congress intended to permit family members to assert their own privacy rights against public intrusions long deemed impermissible under the common law and cultural traditions. This does not mean that the family is in the same position as the individual who is the disclosure's subject. However, this Court has little difficulty in finding in case law and traditions the right of family members to direct and control disposition of a deceased's body and to limit attempts to exploit pictures of the deceased's remains for public purposes. The well-established cultural tradition of acknowledging a family's control over the body and the deceased's death images has long been recognized at common law. In enacting FOIA and amending Exemption 7(C) to extend its terms, Congress legislated against this background and the Attorney General's consistent interpretation of the exemption. The exemption protects a statutory privacy right that goes beyond the common law and the Constitution, see *id.*, at 762, n. 13. It would be anomalous to hold in this case that the statute provides less protection than does the common law. The statute must also be understood in light of the consequences that would follow from Favish's position. Since FOIA withholding cannot be predicated on the requester's identity, violent criminals, who often make FOIA requests, would be able to obtain autopsies, photographs, and records of their deceased victims at the expense of surviving family members' personal privacy. Pp. 5–12.

2. The Foster family's privacy interest outweighs the public inter-

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est in disclosure. As a general rule, citizens seeking documents subject to FOIA disclosure are not required to explain why they seek the information. However, when Exemption 7(C)'s privacy concerns are present, the requester must show that public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake, and that the information is likely to advance that interest. The Court does not in this single decision attempt to define the reasons that will suffice, or the necessary nexus between the requested information and the public interest served by disclosure, but there must be some stability with respect to both the specific category of privacy interests protected and the specific category of public interests that could outweigh the privacy claim. Here, the Ninth Circuit correctly ruled that the family has a privacy interest protected by the statute and recognized as significant the asserted public interest in uncovering deficiencies or misfeasance in the Government's investigations into Foster's death, but it erred in defining the showing Favish must make to establish his public interest claim. By requiring no particular evidence of some actual misfeasance or other impropriety, that court's holding leaves Exemption 7(C) with little force or content. Under its rationale, the invasion of privacy would be extensive, since once disclosed, information belongs to the general public. Thus, where there is a privacy interest protected by Exemption 7(C) and the public interest asserted is to show that responsible officials acted negligently or otherwise improperly in performing their duties, the requester must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred. When the presumption of legitimacy accorded to the Government's official conduct is applicable, clear evidence is usually required to displace it. Given FOIA's pro-disclosure purpose, however, a less stringent standard is more faithful to the statutory scheme. Only when the FOIA requester has produced evidence sufficient to warrant a belief by a reasonable person that the alleged Government impropriety might have occurred will there be a counterweight on the FOIA scale for a court to balance against the cognizable privacy interests in the requested documents. Favish has produced no evidence to put that balance into play. The District Court's first order—before it was set aside by the Ninth Circuit and superseded by the District Court's remand order—followed the correct approach. Pp. 12–17.

37 Fed. Appx. 863, reversed and remanded.

KENNEDY, J., delivered the opinion for a unanimous Court.